STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	**)**	
	)	
Annual formula rate update and revenue requirement reconciliation under Section 16-108.5 of the Public Utilities Act.	**)**	**Docket No. 14-0312**

EXCEPTIONS AND BRIEF ON EXCEPTIONS OF

THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois

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NOW COME the People of the State of Illinois ("AG" or "the People"), by and through Lisa Madigan, Attorney General of the State of Illinois, pursuant to Part 200.830 of the Illinois Commerce Commission's ("the Commission" or "ICC") rules, 83 Ill. Adm. Code Part 200.830, and in accordance with the schedule established in this docket, hereby file their Brief on Exceptions and Exceptions to the Proposed Order ("PO") issued by the Administrative Law Judges ("ALJs") on October 15, 2014 in the above-captioned docket, which will establish a new electric delivery service revenue requirement for Commonwealth Edison Company ("ComEd" or the "Company") effective January 1, 2015.

I. INTRODUCTION

The People appreciate the PO's careful consideration of the record evidence and the various parties' arguments. The People take exception to the PO in two respects: First, in light of the PO's finding that ComEd's 2013 Annual Incentive Program ("AIP") expense was based on the earnings per share of ComEd's affiliate, Exelon Corporation ("Exelon"), the Commission should disallow recovery of *all* such 2013 AIP expense instead of allowing recovery of the expense up to a payout percentage of 102.9%. Second, if the Commission still finds that it lacks

statutory discretion to deduct accumulated deferred income tax ("ADIT") from the reconciliation balance before calculating interest thereon under Section 16-108.5(d)(1) of the Energy Infrastructure Modernization Act ("EIMA"), the Commission should adopt the People's alternative proposal to include reconciliation-related ADIT in ComEd's rate base, just as ComEd's other Illinois distribution-jurisdictional ADIT is included in rate base..

II. Exception No. 1: If The Commission Finds That ComEd's 2013 Annual Incentive Program Expense Was Based on Exelon's Earnings Per Share, It Should Disallow All Such Expense.

Regarding the portion of the Proposed Order addressing the contested issue of AIP incentive compensation expense, the People support the findings in the Proposed Order that "the EPS[1] limiter of the AIP is contrary to EIMA" (PO at 49); "[a]ny incentive compensation expense that is based on income or EPS, whether through a metric or otherwise, is prohibited" (PO at 50); and "[t]he record is clear that the amount ComEd is seeking to recover for its 2013 incentive compensation expense is based on Exelon's EPS" (PO at 50) for all the reasons they stated in their Initial Brief[2] and Reply Brief[3]. The People also agree with the Commission's findings that "the purpose of the EPS limiter is unclear" and that "[i]t does not benefit ratepayers . . . because it could provide a disincentive to employees to meet the operational metrics when Exelon's earning per share are low" (PO at 50) for all the reasons in their Initial Brief and Reply Brief.

However, in light of the PO's finding that the requested 2013 AIP expense recovery violates the rules in Section 16-108.5(c)(4)(A) of EIMA prohibiting recovery of incentive

[1] "EPS" stands for earnings per share.

[2] References in this Brief on Exceptions to the People's "Initial Brief" are to the People's Second Corrected Initial Brief filed September 16, 2014.

[3] References in this Brief on Exceptions to the People's "Reply Brief" are to the People's Corrected Reply Brief filed September 18, 2014.

compensation expense that is based on an affiliate's earnings per share, the People take exception to the PO's proposed decision to disallow only part of ComEd's 2013 AIP expense and instead allow recovery up to a 102.9% effective payout percentage.[4] The statutory provision and the PO's findings, if adopted by the Commission, unequivocally require that **all** of ComEd's 2013 AIP expense be disallowed from recovery, for the following reasons.

1. ***The 102.9% recovery figure proposed by Staff is not based on any facts of the 2013 Annual Incentive Program***. No witness came close to suggesting that the 102.9% alternative recovery level proposed by Staff arose from the 2013 AIP. The only justification that Staff witness Bridal gave for the 102.9% figure in making his alternative proposal is that this was the level the Commission "authorized [ComEd] to recover in prior ComEd formula rate dockets." Staff Ex. 8.0 at 33:781-784. As ComEd witness Ms. Brinkman stated in testimony, "the 102.9% figure [allowed for recovery in Docket No. 11-0721] was based on facts specific to the 2010 AIP plan" but "102.9% does not specifically relate to the 2013 AIP plan." ComEd Ex. 25.0 at 3:62, 60.

2. ***The 102.9% recovery figure proposed by Staff in this proceeding was an artifact of specific facts of the 2010 Annual Incentive Program.*** As the People noted in their Initial Brief at 38 and 39, the 102.9% figure approved by the Commission for recovery of AIP expense in Docket No. 11-0721 was the calculated level of AIP payout percentage (after application of a financial limiter[5]) in 2010 before Company leadership decided under the CEO Discretionary

[4] By "payout percentage" the People mean the percentage that would be multiplied by an employee's target opportunity percentage, multiplied by incentive-eligible base salary, in order to determine the dollars of AIP payout. In the 2013 AIP, the equivalent of this payout percentage is the Company Performance Multiplier, or the effective Company Performance Multiplier after application of the Shareholder Protection Feature. *See* AG Ex. 1.7 at 3 (2013 Exelon AIP guide).

[5] The net income limiter in the 2010 AIP differed significantly from the EPS limiter embodied in the Shareholder Protection Feature in the 2013 AIP, in that the 2010 limiter "only applie[d] to the amount of the payout

Feature to effectively remove the limiter and *also* to increase the payout percentage that had been calculated solely by Key Performance Indicators ("KPIs").[6] Had operational KPIs and/or ComEd financial performance in 2010 been higher or lower, the 102.9% figure might have been different.[7]

3. *The Commission's logic for approval of the 102.9% payout percentage figure in Docket No. 11-0721 was to prevent manipulation by ComEd*. The Commission found in its Order in Docket No. 11-0721 that "a cap on incentive compensation benefits that are recoverable through rates is necessary, given the potential for manipulation between the two incentive compensation programs. The Commission therefore adopts Staff's cap of 102.9% for any incentive program.[8,9] No such manipulation has been alleged in this proceeding; thus, no commensurate logic can be deployed to justify the same conclusion the Commission made in Docket No. 11-0721. Even if the Commission wanted to continue the 102.9% cap "for any

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in excess of target" [where "target" is 100%] as the People noted in their Initial Brief in this proceeding at 37. *See* Docket No. 11-0721, Staff Ex. 13.0, February 24, 2012, Attachment A, available at http://www.icc.illinois.gov/downloads/public/edocket/313571.pdf, 27th page of PDF. By contrast, the 2013 EPS limiter could reduce a payout percentage *below* target – as little as 50% – all the way down to zero. AG Initial Brief at 13; AG Ex. 1.7 at 7 (2013 Exelon AIP guide). It is unclear whether the net income limiter in the 2010 AIP was lawful under EIMA; in any event, no party elected to challenge its lawfulness in Docket No. 11-0721, as the People noted in their Initial Brief at 38 and their Reply Brief at 9-10.

[6] *See* Docket No. 11-0721, Staff Ex. 13.0, February 24, 2012, Attachment B, available at http://www.icc.illinois.gov/downloads/public/edocket/313571.pdf, 28th page of PDF (Company responses to data requests AG 1.13(a) and (b)). The payout percentage determined by reference solely to operational KPIs in 2010 was 110.3%. The net income limiter created a cap on payout percentage of 102.9%. Under the CEO Discretionary Feature, the AIP payout percentage was increased to 112.1% without any reference to operational KPIs, *and* the net income limiter was simultaneously increased to 112.9%, which effectively and conveniently removed any constraint on AIP payout imposed by the net income limiter.

[7] For example, if KPIs in 2010 had been somewhat poorer and resulted in a calculated payout percentage of, say, 95%, then the net income limiter of 102.9% *never* would have reduced the effective payout percentage, even before the exercise of the CEO Discretionary Feature. One can imagine that in such event, if ComEd had then used the CEO Discretionary Feature to increase the effective payout percentage to 112.1%, the Commission might have allowed only expense recovery based on the 95% figure.

[8] Order, Docket No. 11-0721, May 29, 2012, at 90.

[9] The second incentive compensation from which funds were re-directed to AIP payout in 2010 was the Executive Long-Term Incentive Program. Docket No. 11-0721, Staff Ex. 13.0, February 24, 2012, Attachment B, available at http://www.icc.illinois.gov/downloads/public/edocket/313571.pdf, 28th page of PDF (Company response to data request AG 1.13(b)).

incentive program" that it announced in Docket No. 11-0721 after considering ComEd's manipulation, that does not excuse the plain unlawfulness of *all* 2013 AIP expense, which makes it *all* unrecoverable before considering the Docket No. 11-0721 rule.

4. *The Commission did not approve the 102.9% AIP recovery level in any formula rate case after Docket No. 11-0721*. As the People showed in their Initial Brief at 39, incentive compensation was an uncontested issue in both of Docket No. 12-0321[10], which considered expenses from the 2011 AIP, and Docket No. 13-0318[11], which considered expenses from the 2012 AIP. As the People noted in their Reply Brief at 11, while ComEd may have voluntarily self-disallowed some 2012 AIP expense consistent with the 102.9% payout percentage figure from Docket No. 11-0721 before submitting its revenue requirement request in Docket No. 13-0318 (*see* Staff Ex. 8.0 at 27:669-28:677), the Commission did not specifically address the issue in its Docket No. 13-0318 order. *Id.*

5. *Allowing ComEd to recover 2013 AIP expense as though its effective Company Performance Multiplier in 2013 had been 102.9% would not "negate" or "eliminate" the EPS limiter*. The 2013 payout percentage, or Company Performance Multiplier, calculated before application of the EPS limiter in the Shareholder Protection Feature was 140.39%. The EPS limiter reduced the effective payout percentage to 124.35%, and ComEd paid out 2013 AIP pay to its employees on that basis. ComEd Ex. 2.0 at 23:472-475. "Eliminating" or "negating" the EPS limiter (as the PO at 49 suggests should be done) for purposes of rate recovery would mean

[10] ComEd confirmed in a discovery response that incentive compensation was an uncontested issue in Docket No. 12-0321. AG Cross Exhibit 13 at 5; *see also* Staff Ex. 8.0 at 27:664 ("[i]n Docket No. 12-0321, ComEd's AIP was not a contested issue") and Order, Docket No. 12-0321, December 19, 2012, at 31-32 (Incentive Compensation Expense included among Potentially Uncontested Issues).

[11] *See* Order, Docket No. 13-0318, December 18, 2013, at 38 ("The incentive compensation program expenses at issue in this docket are: (1) ComEd's Long-Term Performance Share Awards Program ("LTPSAP"), and (2) incentive compensation associated with ComEd's energy efficiency employees").

allowing recovery as though the EPS limiter did not exist, or in other words, allowing recovery based on an effective 140.39% Company Performance Multiplier. However, that is impossible, because ComEd did not pay out that amount; it paid out a lesser amount based on the 124.35% effective Company Performance Multiplier. ComEd could not be granted recovery of more expense than it actually incurred. As the People noted at pages 17-18 of their Reply Brief, ComEd is not proposing to retroactively "eliminate" the EPS limiter by paying its employees the additional $8.5 million[12] that they would have received in 2013 AIP pay if the EPS limiter had not been in place.

Perhaps it could be argued that by imposing any alternative limiter (such as the 102.9% figure taken from Docket No. 11-0721) that is not based on Exelon EPS, the Commission would be somehow "negating" the EPS limiter; by this logic, any Commission-imposed limiter below 124.35% – even 124.34% – would "negate" or "eliminate" the EPS limiter, even if that might stretch the ordinary definition of "negate" or "eliminate" to mean "replace". But the fact that ComEd would recover *any* positive amount of AIP expense above zero reflects that it *paid out* a positive amount of AIP pay, which in turn reflects that Exelon's EPS met the "threshold" level of $2.22 in 2013 (AG Ex. 1.7 at 7 (2013 Exelon AIP guide)). Thus, even with a Commission-imposed limiter, the recovered amount of ComEd's AIP expense would be still "based on" Exelon EPS. Any Commission-imposed alternative limiter would be a limit on *recovery*, but would not alter the fact that AIP *expense* already incurred in 2013 was EPS-based and thus not legally recoverable, as the People noted in their Initial Brief at 17.

6. ***AIP expenses that are not prudent and reasonable should be disallowed***. Section 16-108.5(d) (in the unnumbered portion following Section 16-108.5(d)(3)) of EIMA provides that in

[12] ComEd Ex. 12.0 (Rev.) at 6:117-118.

an annual formula rate update proceeding, "the Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act." If the Commission finds that "[ComEd] failed to convince the Commission that its annual incentive plan with its EPS limiter is reasonable and prudent" (PO at 50), it should deny recovery of the related AIP costs. In light of the employee disincentives that the PO recognizes were created by the 2013 AIP's EPS limiter, the Commission should deny recovery of all AIP expense as not prudent and not reasonable.

The PO also observes that "these employees' market based salaries, paid through base pay and an incentive compensation plan consistent with the operational metrics outlined in Section 5/16-108.5(c)(4)(A) of EIMA, are a just and reasonable expense recoverable from ratepayers" (first paragraph on page 49). No party is challenging ComEd's recovery of 2013 base salary paid to its employees, and no party has alleged that AIP expense based *only* on operational KPIs would be legally ineligible for recovery. But as the PO suggests, the Shareholder Protection Feature in the AIP creates employee disincentives that renders all AIP expense non-prudent and non-reasonable and thus ineligible for recovery.

7. *EIMA prohibits recovery of EPS-based incentive compensation expense even if the amounts are at a "market" level*. Even if the Commission finds that the dollar amount of total employee compensation assuming a 100% Company Performance Multiplier level in the AIP is "market based", i.e. the amount of (i) such AIP payout plus (ii) the amount of base salary is commensurate with market-standard levels of total compensation, the AIP expense component is *not* necessarily recoverable to the extent of a 100% payout percentage if that expense is also based on Exelon's earnings per share. (Moreover, the PO would allow AIP expense recovery at

slightly *more* than a 100% payout percentage; the excess above 100% seemingly has no "market based" justification.) Section 16-108.5(c)(4)(A) of EIMA does not allow recovery of incentive compensation that is based on an affiliate's EPS, and it allows no exception for recovery of "market based" incentive compensation that violates the affiliate EPS prohibition.

8. ***No recovery of AIP expense can be allowed where the entire expense amount is "more than based on Exelon's EPS, it is entirely controlled and determined by its affiliate's earnings per share," as the PO finds at 50.*** In addition to the PO's finding that ComEd's 2013 AIP expense was based on Exelon EPS, the PO's directive that "ComEd should work with Staff to develop an incentive compensation plan that is consistent with EIMA" is a clear acknowledgment that the 2013 AIP was unlawful. In light of the Commission's finding that 2013 AIP expense was based on Exelon's EPS and thus inconsistent with EIMA, the required ratemaking adjustment is then equally clear: the entire amount of AIP expense must be excluded from the revenue requirement. No alternative diluted remedy, such as the 102.9% recovery level endorsed by the PO, can be justified given the terms of the AIP.

9. ***EIMA does not allow for any positive recovery of unlawful incentive compensation expense in order to avoid "disproportionate" effects***. Section 16-108.5(c)(4)(A) of EIMA does not provide that disallowance of incentive compensation expense that is found to be based on an affiliate's earnings per share must be "proportionate", as the Proposed Order suggests at 50. Additionally, the Proposed Order does not attempt to define what any disallowance should be "proportionate" to. No party in this proceeding has suggested that there may be fine gradations of better or worse unlawful activity. Either the AIP violates EIMA or it does not. The statutory admonition that "[i]ncentive compensation expense that is based on net income or an affiliate's

earnings per share shall not be recoverable under the performance-based formula rate" could not be plainer or clearer.

Exception No. 1 Proposed Language

The People recommend the following changes to the "Commission Analysis and Conclusion" section of the PO at pages 48-50 regarding AIP expense:

> ComEd also explained it designs its incentive compensation plan such that its employees' salaries are partially recovered through base pay and partially recovered through at risk pay. In other words, ComEd identifies what the market based salary of each individual should be (100%) and it pays 80% through base pay and 20% through the AIP. It appears to the Commission that these employees' market based salaries, *if* paid through base pay and an incentive compensation plan consistent with the operational metrics outlined in Section 5/16-108.5(c)(4)(A) of EIMA and also compliant with the proscription against financial metrics in the same section, would be ~~are~~ a just and reasonable expense recoverable from ratepayers. ~~For this reason, the Commission is reluctant to adopt the AG's 100% disallowance of the AIP.~~
>
> The Commission agrees with the AG and Staff, however, that the EPS limiter of the AIP is contrary to EIMA. ~~, but the remedy the AG seeks – total cost disallowance – is disproportionate. The Commission therefore agrees with Staff's alternate position that the appropriate remedy is to eliminate the limiter, not to disallow ComEd's AIP expense in its entirety. The Commission finds that the alternative 102.9% limiter proposed in this proceeding effectively negates any impact of the controversial EPS-based shareholder protection feature on ComEd's 2013 AIP incentive compensation.~~
>
> ~~It appears that if ComEd employees do not receive their AIP, they receive below market wages. Staff's proposal of 102.9% represents a 2.9% bonus plus 100% of the fair market value of employee salaries. This would result in an adjustment of approximately $(6,104,000) to the operating statement and $(4,006,000) to rate base. ComEd Ex. 25.01. The Commission agrees with Staff that allowing the Company to recover 102.9% allows ComEd to recover close to market-level compensation.~~
>
> ~~The record shows that if Exelon's EPS is high enough, employees can receive over 140% of at risk pay. In Docket No. 11-0721, the Commission stated that:~~

~~The Commission does, however, find that a cap on incentive compensation benefits that are recoverable through rates is necessary, given the potential for manipulation between the two incentive compensation programs. The Commission therefore adopts Staff's cap of 102.9% for any incentive program. Doing so allows for some growth in incentive compensation for ComEd's employees, while placing a damper on the ability of ComEd's management to manipulate the caps on these programs in a manner that increases rates without evidence that adequate benefits flow to ratepayers.~~

~~Docket No. 11-0721, Order at 90. Although manipulation is not suggested here, it was also not shown that the possible incentive compensation rewards are reasonable and prudent. Thus, applying the 102.9% cap again in this proceeding is reasonable.~~

~~Also,~~ ComEd's refusal to call the EPS limiter a metric does not make it statutorily permissible. EIMA requires the Commission to approve incentive compensation expense that is based on the achievement of certain operational metrics. The Commission is prohibited from approving incentive compensation expense that is based on net income or an affiliate's EPS. The first sentence of Section 16-108.5(c)(4)(A) speaks of metrics; the second sentence does not. The Commission must assume that this omission was intentional on the part of the legislature. Considering Section 16-108.5(c)(4)(A) in that light requires a finding that ComEd's EPS limiter is prohibited. Any incentive compensation expense that is based on income or EPS, whether through a metric or otherwise, is prohibited. Thus, the Commission adopts the AG's recommendation to disallow all of ComEd's 2013 AIP expense from recovery. This would result in an adjustment of approximately $(36,730,000) to the operating statement and $(24,103,000) to rate base. ComEd Ex. 12.01 REV.

The record is clear that the amount ComEd is seeking to recover for its 2013 incentive compensation expense is based on Exelon's EPS. Expense means operating expenses that are reflected in the Company's FERC form 1 or otherwise reflected in the Company's books and records. Staff Ex. 8.0 at 22. The dollar amount paid to its employees and sought to be recovered from ComEd's ratepayers is based on Exelon's EPS. Regardless of its employees' performance on the operational metrics, the actual expense amount is more than based on Exelon's EPS, it is entirely controlled and determined by its affiliate's earnings per share. If Exelon's EPS is too low, ComEd employees receive no AIP regardless of their performance on operational metrics.

Pursuant to EIMA, ComEd will recover all of its reasonably and prudently incurred actual costs for 2013 – including employee salaries.

> With this in mind, the purpose of the EPS limiter is unclear. It does not benefit ratepayers, as suggested by ComEd, because it could provide a disincentive to employees to meet the operational metrics when Exelon's earning per share are low. Also, the design of the AIP could result in above market salaries if the performance on the operational metrics and the earnings per share are high enough. In a footnote to its Reply Brief, ComEd states that the EPS limiter is in place to provide consistency across the Exelon family. ComEd Reply Brief at 24. The Commission notes that ComEd strenuously argued that the EPS limiter is not prohibited by EIMA, but failed to convince the Commission that its annual incentive plan with its EPS limiter is reasonable and prudent. ComEd should work with Staff to develop an incentive compensation plan that is consistent with EIMA.

III. Exception No. 2: If The Commission Declines To Adjust The Reconciliation Balance To Which Interest Applies Pending Resolution By The Appellate Court, The Commission Should Adjust Rate Base By The Reconciliation ADIT.

A recurring issue in ComEd's formula rate dockets has been how to apply interest to the reconciliation balance. First, the question of the interest rate was contested. Now that the General Assembly set the interest rate at the weighted average cost of capital through P.A. 98-0015, the effect of interest on the revenue requirement has grown substantially from what it would have been had the short-term interest rate had been applied. As shown in AG Exhibit 2.0 at page 9, ComEd calculated an interest cost on the 2013 reconciliation balance of $34,167,000. When the $93,300,000 in taxes associated with the foregone revenue are removed, the interest expense alone is reduced by $14,068,000 to $20,099,000. Charging consumers an interest expense on the portion of the under-collection that the Company does not have to finance (because if collected in 2013, it would have been due to government as tax) represents a $14 million revenue transfer from consumers to shareholders that is not justified by the Company's actual interest expense.

The Company's position, as related in the PO at pages 63-66, appears to confuse the essence of this adjustment by failing to differentiate the *recovery* of the tax expense as part of the reconciliation balance and the *application of interest* to the "under-collection." The interest cost is separate from and an add-on to the reconciliation under-collection. Both AG witnesses Mr. Brosch and Mr. Effron recognize that the reconciliation charge added to the revenue requirement includes the tax expense. The only issue is whether interest should apply to that tax expense.

The PO declines to recommend a change to the Commission's conclusion in Docket 13-0553, where the Commission rejected the net-of-tax interest expense adjustment. PO at 75. The People recognize that the Commission's decision was based on its conclusion that it was constrained by the language of the statute. This issue is currently before the Appellate Court, First District as case no. 14-0275, and the scope of the Commission's discretion will be determined in that case.

Notwithstanding the pendency of that appeal, however, the People maintain that the alternative proposal presented by Mr. Brosch is necessary if consumers are going to provide the Company $14 million in revenue as an interest cost despite the fact that the Company will not incur a financing expense related to the tax component of the $93.3 million reconciliation under-collection (because that $93.3 million amount would have gone directly to government had it been actually collected in 2013). It is undisputed that ComEd recognizes reconciliation-related ADIT in the amount of $164.9 million. AG Ex. 1.0C2 at 9:213. Reconciliation revenues and taxes are clearly distribution-related, arising under Section 16-108.5(d). AG Ex. 3.0C at 18:412-415. By not including this ADIT in its ADIT balance, ComEd effectively retains the benefit of this tax accounting for shareholders.

The PO does not explain why it rejects this alternative approach to the People's primary recommendation. It is clear that ComEd identifies $164.9 million in ADIT as reconciliation related, and therefore it is related to Illinois jurisdictional operations. However, ComEd argued that it loses its jurisdictional nature because the underlying reconciliation revenue obligation (or regulatory asset) is not in rate base. PO at 66 ("ComEd also contends that it is conceptually improper to deduct from rate base ADIT that relates to an item that itself is not given rate base treatment, in this case the reconciliation balance."). While the Company's right to recover the reconciliation revenues from consumers is not defined as a regulatory asset in the statute, ComEd receives compensation for the time value of the delay in an amount equal to its weighted average cost of capital. See 220 ILCS 5/16-108.5(d)(1). "It is disingenuous and misleading to state that '…no corresponding asset exists in rate base' [quoting ComEd witness Brinkman, ComEd Ex. 12.0 at 26] when EIMA instead provides an interest return at the WACC on this regulatory asset at ratepayers' expense outside of rate base. An equitable matching of costs and benefits requires that ratepayers receive the benefit of reconciliation-related ADIT balances because they are responsible for an interest return on reconciliation-related Regulatory Asset balances under the EIMA." AG Ex. 3.0C at 5:107-113.

The Commission's goal is to determine the utility's actual costs with the specific statutory provision that rates include "interest [on the reconciliation-related under- or over-collection] calculated at a rate equal to the utility's weighted average cost of capital" rather than including the under- or over-collection in rate base as a regulatory asset. In addressing statutory terms that may be inconsistent, Illinois courts have made it clear that statutes "relating to the same subject with reference to one another [must be construed] in order to give effect to all the provisions in possible." *Commonwealth Edison Co. v. Ill. Comm. Comm'n*, 2014 IL App (1st)

130544, ¶ 22. If the Commission concludes that the statute prevents it from recognizing the Company's actual reconciliation financing expense by applying interest to only the net-of-tax reconciliation balance, the Commission should apply established ratemaking principles and treat the reconciliation-related ADIT as it treats all other jurisdictional ADIT, despite the statutory directive that the reconciliation under-recovery be subject to "interest" rather than being subject to a return or treated as a regulatory asset.

Exception No. 2 Proposed Language

The People recommend the following changes to the "Commission Analysis and Conclusion" section at pages 75-76 of the PO regarding the reconciliation interest calculation:

> Consistent with the Commission's prior orders, the Commission declines to adopt the adjustment proposed by the AG and CCI to apply interest only on the net-of-tax reconciliation balance. In Docket No. 13-0553, the Commission stated the following:
>
> > While there may be merit to the AG and CCI's proposal and while there may be some debate as to the plain meaning of the Act, the Commission is troubled by the fact that although Section 16-108.5(d)(1) fails to prohibit such accounting treatment, the converse is also true—it does not appear to require or even reference it. Further, as ComEd points out, where the Act does intend that adjustments be made to an amount of a balance, it has done so specifically, as in the case of projected plant additions which are to be included on a net basis considering updated depreciation reserve and expense, 220 ILCS 5/16-108.5(c)(6), or in the ROE collar calculation where the utility is required to apply a credit or charge that "reflects an amount equal to the value of that portion of the earned rate of return on common equity that is more than 50 basis points higher [or lower] than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c)…for the prior rate year, adjusted for taxes." 220 ILCS 5/16-108.5(c)(5).
>
> Docket No. 13-0553, Final Order at 43 (Nov. 26, 2013). The Commission declines to ~~has not been provided sufficient reason to~~ overturn this decision~~.~~ and notes that the ~~The~~ decision in Docket No. 13-0553 has been appealed. ~~and if it~~ If that decision is overturned, then ComEd is

directed to recalculate the interest on the reconciliation balance, consistent with the AG/CCI proposal.

Pending the decision on appeal, the Commission is concerned that consumers are being asked to both pay interest on taxes that are deferred and pay a return on rate base as if that deferral did not exist. ComEd acknowledges that the reconciliation balance and the tax are both deferred, and ComEd accounts for the reconciliation-related taxes as part of its ADIT account. The reconciliation-related ADIT is plainly related to ComEd's Illinois delivery services and to Section 16-108.5. Accordingly, the Commission concludes that it is Illinois jurisdictional ADIT. The reconciliation-related ADIT shall be included in ComEd's Illinois jurisdictional ADIT and treated the same as all other Illinois jurisdictional ADIT.

IV. REQUEST FOR ORAL ARGUMENT

The People respectfully request that the Commission set this matter for oral argument with respect to the incentive compensation issue, as authorized under 83 Ill. Adm. Code § 200.850(a), which provides that the Commission may hear oral argument upon seven days' notice to the parties upon a request for oral argument noted by a party on either its opening brief, reply brief or brief on exceptions, accompanied by a statement in support of such request in the body of the brief.

In this proceeding, the issues presented with respect to the 2013 Annual Incentive Program are complex, particularly since the PO looks to facts from a prior year's formula rate case order to arrive at its rule of decision. Where the issues are complex, the need for a comprehensive understanding and informed exercise of Commission authority is critical. The Commission would benefit from oral argument on this matter.

V. CONCLUSION

WHEREFORE, the People of the State of Illinois respectfully request that the Commission enter a final order consistent with the recommendations in this Brief and adopt the Exceptions provided above.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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